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**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Wright
Serial No.: 09/767,014 Group No.: 3628
Filed: January 22, 2001 Examiner: Debra Charles
For: INSTANTANEOUS INTERNET CHARGING

APPELLANTS' BRIEF UNDER 37 CFR §1.192

Mail Stop Appeal Brief
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

I. Real Party in Interest

The real party and interest in this case is Carl A. Wright, Applicant and Appellant.

II. Related Appeals and Interferences

There are no appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

The present application was filed with 24 claims. Claims 1-9 are being canceled by an after-final amendment attached hereto. Claims 10-24 are pending, rejected and under appeal. Claim 10 is the sole independent claim.

**IV. Status of Amendments Filed Subsequent
Final Rejection**

An after-final amendment is attached hereto, canceling claims 1-9.

V. Summary of Claimed Subject Matter

Independent claim 10 is directed to a method for providing timely information related to usage of an Internet service. The method includes the step of providing measured units of Internet service to one or more users. The measured units are tallied as they are consumed by one or more users and a rate per measured unit of Internet service is assessed. The method further includes the steps of calculating a price associated with the consumed measured units of Internet service by multiplying the tally of measured units of Internet service with the assessed rate, and forwarding, within a close time proximity to the consumption of the measured units of Internet service by one or more users, information via a communication link to a designated location, where the information includes at least one of the tally of the measured unit of Internet service, the assessed rated, and the calculated price (Specification page 6, line 10 to page 8 line 16; Figures 1 and 2).

VI. Grounds of Objection/Rejection To Be Reviewed On Appeal

A. The rejection of claims 10 -20, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,818,725 to McNamara et al.

B. The rejection of claim 21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,818,725 to McNamara et al. as applied to claim 10, in view of U.S. Patent No. 6,535,591 to Galich et al.

C. The rejection of claim 22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,818,725 to McNamara et al. as applied to claim 10, in view of U.S. Patent No. 6,721,716 to Gross.

VII. Arguments**A. The Rejection of Claim 10 under 35 U.S.C. §103(a)**

Claim 10 stands finally rejected under 35 U.S.C. §103(a) over McNamara et al., U.S. Patent No. 5,818,725 A. On page 7 of the final Office Action, while conceding that "McNamara et al. does not explicitly disclose [sic], Internet," the Examiner's argument is as follows:

in the Abstract [of McNamara], col. 2, lines 60-67, col. 4, line 45-col. 5, line 15, McNamara et al. does disclose a network for relaying digital data and the internet is a network. Thus, it would have been obvious to one

with an ordinary level of skill in the art to employ the internet which is a network to get the benefit of continuously metered information on usage consumption.

The Examiner misses the point. It is as though the Examiner is saying that because McNamara et al. could *use* the internet, the steps of Appellant's method are obvious. But this is not the case. Appellant's invention doesn't just *use the internet*, but rather, represents a method (and system) for real-time or near real-time presentation of usage, rate, and billing account information related to the consumption of internet services by one or more users. The system of McNamara et al. does nothing of the kind.

Although McNamara does reside in a system whereby information may be provided in conjunction with the use of a service, this service is electrical power and not digital data or electronic information. The Board will note that the Examiner has ignored the specific references to the internet in the body of Appellant's claims, using only a summary statement that McNamara et al. could "use" the internet for its purposes. But that falls far short of establishing *prima facie* obviousness.

In particular, claim 10 includes the step of "providing measured units of Internet service to one or more users." With respect to that element, the Examiner states that "[McNamara et al. disclose the step of] providing measured units of service to one or more users," citing column 2, lines 60-67. Reference to that particular passage of McNamara et al., while discussing a T-based communication digital backbone network, makes no mention whatsoever of measured units of internet service. Appellant further claims the step of tallying the measured units as they are consumed by one or more users. Again, while the Examiner claims that McNamara et al. tally measured units of internet service, this is impossible because they never provide measured units of such service in the first place. Appellant further claims the step of assessing a weight per measured unit of internet service consumed by one or more users as the measured units are tallied. With respect to this step, the Examiner again conveniently leaves out the reference to "the internet" in citing particular passages from the McNamara reference. Appellant further claims the step of calculating the price associated with the consumed measured units of internet service by multiplying the tally of measured units of internet service with the assessed rate. The Examiner contends that such a step is disclosed at column 3, line 34 – column 4, line 67 and column 6, lines 40-55 and Figure 3B of McNamara et al. The Board is invited to review these passages of the McNamara et al. reference, for it is certain that they will concur no such disclosures

exist. Thus, in summary, it is somewhat ironic that after purportedly finding all of Appellant's steps being performed by McNamara in conjunction with the internet, the Examiner ultimately concedes that "McNamara et al. does not explicitly disclose [sic] internet." In any event, *prima facie* obviousness has not been established.

Given that claims 11-24 add limitations above and beyond those set forth in claim 10, claims 11-24 are allowable as well on the grounds that *prima facie* obviousness has not been established.

Conclusion

In conclusion, for the arguments of record and the reasons set forth above, all pending claims of the subject application continue to be in condition for allowance and Appellant seeks the Board's concurrence at this time.

Respectfully submitted,

By: _____

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APPENDIX A

CLAIMS ON APPEAL

10. A method for providing timely information related to usage of an Internet service, the method comprising the steps of:

providing measured units of Internet service to one or more users;

tallying the measured units of Internet service provided to one or more users as the measured units of Internet service are consumed by one or more users;

assessing a rate per measured unit of Internet service consumed by one or more users as the measured units are tallied;

calculating a price associated with the consumed measured units of Internet service by multiplying the tally of measured units of Internet service with the assessed rate; and

forwarding, within a close time proximity to the consumption of the measured units of Internet service by one or more users, information via a communication link to a designated location, where the information includes at least one of the tally of the measured unit of Internet service, the assessed rated, and the calculated price.

11. The method according to claim 10, further comprising an initial step of accessing, by one or more users, a connection device connected to the Internet.

12. The method according to claim 11, wherein the connection device further comprises a display device.

13. The method according to claim 12, wherein the display device further comprises a telephone.

14. The method according to claim 13, wherein the telephone utilizes wireless technology.

15. The method according to claim 11, further comprising a final step of displaying the

forwarded information on the display device accessed by the user.

16. The method according to claim 10, wherein the forwarded information further comprises the tally, the assessed rate, and the calculated price associated with the consumed measured units of Internet service.

17. The method according to claim 10, wherein the communication link further comprises the Internet.

18. The method according to claim 10, further comprising the step of purchasing the Internet service prior to providing measured units of Internet service to one or more users.

19. The method according to claim 18, wherein the forwarded information further comprises data relating to the purchased Internet service not yet consumed.

20. The method according to claim 10, wherein the forwarded information further comprising identification of one or more of the users of the Internet services.

21. The method according to claim 10, further comprising a step of estimating an expense associated with a particular Internet service prior to consumption of the particular Internet service.

22. The method according to claim 10, further comprising a step of requesting payment of the calculated price for consumed Internet services.

23. The method according to claim 10, further comprising a step of collecting the calculated price for consumed Internet services.

24. The method according to claim 10, further comprising a step of discounting the calculated price according to a predetermined criterion.

APPENDIX B

EVIDENCE

None.

APPENDIX C

RELATED PROCEEDINGS

None.